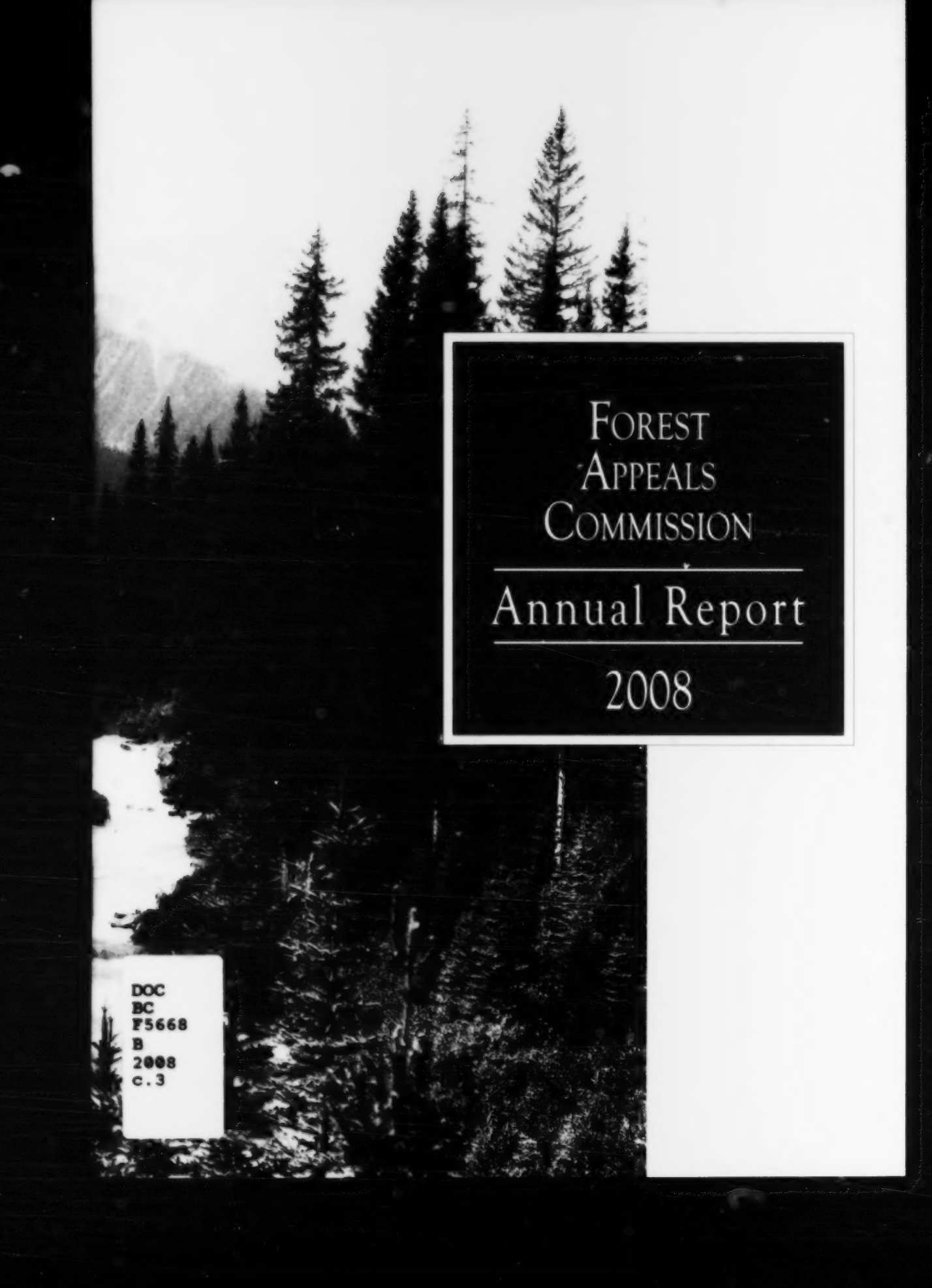

Forest Appeals Commission

Annual Report

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Honourable Pat Bell
Minister of Forests and Range
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Barry Penner
Minister of Environment
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Blair Lekstrom
Minister of Energy, Mines and Petroleum Resources
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 2008 to December 31, 2008.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

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AR 2008

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Message from the Chair

I am pleased to submit the fourteenth Annual Report of the Forest Appeals Commission.

A selection of the Commission's 2008 decisions has been summarized in this report.

While the appeals that come before the Commission continue to involve complex questions of fact and law, the number of appeals filed with the Commission have been decreasing. There were 47 appeals filed in this report period compared to 68 in the 2007 report period. The most substantial change occurred in relation to appeals under the *Forest Act*, which decreased from a record high of 132 in 2005, to 30 appeals in 2008. However, appeals filed under the *Wildfire Act* increased from one in 2007 to six in 2008.

The Commission continues to encourage the parties to resolve the issues underlying the appeals without the need for a hearing. I note that over the past few years, many appeals, particularly appeals of stumpage rates, have been resolved due to the efforts of both licensees and the Government. In that regard, the Commission issued consent orders in 21 appeals under the *Forest Act*. Their efforts to communicate and settle disputes in a conciliatory manner are particularly welcome given the importance of stumpage revenue to the Province.

Finally, I would like to take this opportunity to thank all of the existing Commission members, as well as the Commission staff, for their hard work and dedication over the past year and for their continuing commitment to the work of the Commission.

Alan Andison
Chair

Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the "*Code*"), and has been continued under the *Forest and Range Practices Act*.

This is the fourteenth Annual Report of the Forest Appeals Commission. The information contained in this report covers the twelve-month period from January 1, 2008 to December 31, 2008.

This report describes the structure and function of the Commission and how the appeal process operates. This report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period (i.e., final decisions issued);
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to the legislation, from which it hears appeals.

Finally, a selection of the decisions made by the Commission during the report period has been summarized, legislative amendments affecting the Commission are described, and the relevant sections of applicable legislation are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the Commission's website, and at the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual, which may be obtained from the Commission office or viewed on the Commission website. If you have questions, or would like additional copies of this report, please contact the Commission at:

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The Commission

The Forest Appeals Commission is an independent administrative tribunal, which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act*. The Commission is also responsible for providing the Lieutenant Governor in Council (Cabinet) with an annual evaluation of the appeal and review processes, and with recommendations for amendments to forest legislation and regulations respecting reviews and appeals.

The Commission makes decisions respecting the legal rights and responsibilities of parties that appear before it and decides whether the decision under appeal was made in accordance with the law. Like a court, the Commission must decide appeals by weighing the evidence, making findings of fact, interpreting the legislation and common law, and applying the law and legislation to the facts.

In carrying out its functions, the Commission has the power to compel persons or evidence to be brought before the Commission. The Commission also ensures that its processes comply with the common law principles of natural justice.

Appointments to the Commission and the administration of the Commission are governed by the *Administrative Tribunals Appointment and Administration Act*.

Commission Membership

Commission members are appointed by the Lieutenant Governor in Council (Cabinet) under section 194(2) of the Code. The members appointed to the Commission are highly qualified individuals, including professional foresters, professional biologists, professional engineers, professional agrologists and lawyers with expertise in the areas of natural resources and administrative law. These members apply their respective technical expertise and adjudication skills to hear and decide appeals in a fair, impartial and efficient manner.

The members are drawn from across the Province. Commission membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members. The length of the initial appointments and any reappointments of Commission members, including the chair, are set out in the *Administrative Tribunals Appointment and Administration Act*, as are other matters relating to the appointees. This Act also sets out the responsibilities of the chair.

During the present report period the Commission consisted of the following members:

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During the present report period the Commission consisted of the following members:

MEMBER	PROFESSION	FROM
Chair		
Alan Andison	Lawyer	Victoria
Vice-chair		
David Ormerod	Professional Forester	Victoria
Members		
Sean Brophy	Professional Engineer	North Vancouver
Robert Cameron	Professional Engineer	North Vancouver
Monica Danon-Schaffer	Chemical/Environmental Engineer	West Vancouver
Bruce Devitt	Professional Forester (Retired)	Esquimalt
Margaret Eriksson	Lawyer	New Westminster
Bob Gerath	Engineering Geologist	North Vancouver
R.A. (Al) Gorley	Professional Forester	Victoria
Les Gyug	Biologist	Westbank
James Hackett	Professional Forester	Nanaimo
R.G. (Bob) Holtby	Agrologist	Salmon Arm
Lynne Huestis	Lawyer	North Vancouver
Gabriella Lang	Lawyer	Campbell River
Katherine Lewis	Professional Forester	Prince George
Ken Long	Agrologist	Prince George
Paul Love	Lawyer	Campbell River
Gary Robinson	Resource Economist	Victoria
David Searle, C.M., Q.C.	Lawyer (Retired)	North Saanich
David J. Thomas	Oceanographer	Victoria
Robert Wickett	Lawyer	Vancouver
Stephen V.H. Willett	Professional Forester (Retired)	Kamloops
Phillip Wong	Professional Engineer	Vancouver
J.A. (Alex) Wood	Professional Engineer	North Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions affecting the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. The goal is to ensure that officials make their decisions in accordance with the principles of procedural fairness/natural justice by following proper procedures and acting within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all the parties involved in a hearing before the Commission fairly, giving each party a chance to explain its position.

Appeals to the Commission are decided on a case-by-case basis. Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that previous ones were.

The Commission Office

The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board, the Community Care and Assisted Living Appeal Board, the Health Professions Review Board, the Hospital Appeal Board and the Industry Training Appeal Board.

Each of the tribunals operates independently of one another. Supporting six tribunals through one administrative office gives each tribunal access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Commission Resources

The fiscal 2008/2009 budget for the Forest Appeals Commission was $359,000.00.

The fiscal 2008/2009 budget for the shared office and staff was $1,326,000.00.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Commission by one party must also be provided to all other parties to the appeal.

The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If information is requested by a member of the public regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

In addition, the names of the parties in an appeal appear in the Commission's published decisions which are posted on the Commission's website, and may appear in this Annual Report.

The Appeal Process

Appeals under the *Forest Practices Code of British Columbia Act*

There are no longer any decisions or determinations made under the *Code* that are appealable to the Commission. However, as other statutes refer appeals to the Commission, the *Code* is still important because it both establishes the Commission, and sets out the basic powers and procedures to be employed by the Commission on an appeal (unless otherwise specified).

Specifically, the Commission is established in Part 9 of the *Code*. This part contains the provisions setting out the structure, organization and mandate of the Commission, including its mandate to submit this Annual Report.

The general powers of the Commission on an appeal remain in Part 6 of the *Code*, with additional powers and procedures further detailed in Part 3 of the *Administrative Review and Appeal Procedure Regulation*, B.C. Reg. 12/04.

The appeal powers and procedures set out in sections 131 to 141 of the *Code* apply to appeals filed against decisions made under the *Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*. The *Private Managed Forest Land Act* does not incorporate those *Code* provisions.

Appeals under the *Forest and Range Practices Act*

The *Forest and Range Practices Act* provides for the continuation of the Commission under section 194 of the *Code*. As noted above, it also incorporates the Commission's powers and procedures as set out in the *Code*.

Part 6, Division 4 of the *Forest and Range Practices Act* sets out the decisions that are appealable to the Commission, which include the following:
approval of a forest stewardship plan, woodlot licence plan or an amendment;

- authorizations regarding range stewardship plans;
- approvals, orders, and determinations regarding range use plans, range stewardship plans or an amendment;
- suspensions and cancellations regarding forest stewardship plans, woodlot licence plans, range use plans or range stewardship plans, and permits;
- orders regarding range developments;
- orders relating to the control of insects, disease, etc.;
- orders regarding unauthorized construction or occupation of a building on Crown land in a Provincial forest;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;

- determinations regarding administrative penalties;
- remediation orders and stopwork orders;
- orders regarding forest health emergencies;
- orders relating to the general intervention power of the minister;
- orders regarding declarations limiting liability of persons to government;
- relief granted to a person with an obligation under this Act or operational plan;
- conditions imposed in respect of an order, exemption, consent or approval; and,
- exemptions, conditions, and alternative requirements regarding roads and rights of way.

Prior to an appeal, an official who makes a determination may correct certain errors in the determination within 15 days after the determination was made.

In addition to this correction process, there is an internal administrative review process. If a person is subject to certain specified determinations listed in the *Forest and Range Practices Act*, and that person requests a review, a review **must** be conducted. However, this review is only available if there is evidence that was not available at the time of the original determination. The Forest Practices Board may also require a review of specified determinations listed under the *Forest and Range Practices Act*, if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the *Forest Act*

Appealable decisions under the *Forest Act* are set out in section 146 of that Act and include certain determinations, orders and decisions made by district or regional managers, timber sales managers, employees of the Ministry of Forests, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester, or an employee of the Ministry of Forests, may be appealed to the Commission without prior review (e.g., stumpage determinations). However, determinations, orders or decisions made by a district or regional manager, or a timber sales manager, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Range Act*

The decisions made under this Act that may be appealed to the Commission include the following:

- orders deleting land from the Crown range described in a licence or permit;
- orders by the district manager, or the minister, reducing the number of animal unit months or quantity of hay set out in the licence or permit;
- orders requiring the holder of a licence or permit to refrain from using all or part of the Crown range;
- orders exempting, or refusing to exempt, a licence or permit holder from an obligation to use animal unit months;

- orders relating to the suspension of all or some of the rights granted under a licence or permit, and orders refusing to reinstate suspended rights;
- orders relating to the cancellation of a licence or permit where rights were under suspension;
- decisions that forage or Crown range will not remain available to a licence holder; and,
- amendments to a grazing licence or grazing permit reducing the number of animal unit months due to non-compliance with the licence or permit, or non-compliance with a non-use agreement.

Prior to filing an appeal, the person affected by the order, decision or amendment may request a review, provided that there is evidence that was not available at the time of the original order, decision or amendment.

Either the order, decision or amendment, or the decision made after completion of a review of the order, decision or amendment, may be appealed to the Commission.

An appeal may be filed directly to the Commission against a minister's order issued under section 15(2) of the *Range Act*, which relates to a proposal for a licence or permit.

Appeals under the *Private Managed Forest Land Act*

The requirements for appeals under the *Private Managed Forest Land Act* are set out in section 33 of that Act. That section creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council, including:

- determinations that a person has contravened the Act or the regulations;
- remediation orders;
- stop work orders;
- notifications to the assessor regarding contraventions; and,
- requests of the Council to rescind or vary orders, decisions or determinations.

Appeals under the *Wildfire Act*

Part 3, Division 3 of the *Wildfire Act* sets out the decisions that may be appealed to the Commission. It provides that the person who is subject to certain orders may appeal either the order, or the decision made after the completion of a review of the order, to the Commission.

The Forest Practices Board may also request a review of those same orders, provided that it receives consent from the person who is the subject of the order. Further, it may appeal the order, or the decision made after the completion of the review of the order, to the Commission.

The orders that may be appealed are as follows: orders to abate a fire hazard;

- orders refusing compensation to persons carrying out fire control on the grounds that the person caused or contributed to the fire or to the spread of the fire;
- orders requiring a person to pay the government's costs for fire control and the costs related to the loss of Crown resources as a result of the fire, as determined by the minister;
- contravention orders;
- administrative penalties and cost recovery orders;
- remediation orders and administrative penalties resulting from a failure to comply with a remediation order; and,
- stop work orders.

Legislative Amendments Affecting the Commission

In this report period, there were no legislative changes that directly affected the Commission. Specifically, there were no amendments that affected the types of appeals the Commission hears, or that affected the Commission's powers or procedures.

Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission also makes recommendations on amendments to the legislation respecting reviews and appeals.

The Commission is pleased to report that no problems have been identified in either the review or the appeal process during the past year.

Accordingly, the Commission is not making any recommendations in relation to either of these processes at this time.

Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission and decisions published by the Commission, during the report period. The Commission publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

A total of 47 appeals were filed with the Commission in 2008. Eleven of these appeals were filed under the *Forest and Range Practices Act*, 30 were filed under the *Forest Act*, and six appeals were filed under the *Wildfire Act*. The total number of appeals closed without a hearing during the reporting period was 29. Of this number, two appeals were rejected and 27 were withdrawn or abandoned. A total of 16 appeals were completed in 2008.*

The Commission issued 19 decisions in 2008, including seven consent orders.

Appeals filed	
Appeals filed under the *Code/Forest and Range Practices Act*	11
Appeals filed under the *Forest Act*	30
Appeals filed under the *Private Managed Forest Land Act*	0
Appeals filed under the *Range Act*	0
Appeals filed under the *Wildfire Act*	6
Total Appeals filed	47
Appeals abandoned, rejected or withdrawn	29
Hearings held on the merits of appeals	
Oral hearings completed	1
Written hearings completed	4
Total hearings held on the merits of appeals**	5
Published decisions issued	
Final decisions	
Forest and Range Practices Act	1
Forest Act	8
Private Managed Forest Land Act	
Range Act	
Wildfire Act	
Consent order	
Forest and Range Practices Act	1
Forest Act	6
Private Managed Forest Land Act	
Range Act	
Wildfire Act	
Preliminary decisions	
Code/Forest and Range Practices Act	3
Total published decisions issued	19

This table provides a summary of the appeals filed with this office and their status.

Summary of Results of Final Decisions

	Allowed	Allowed in Part	Dismissed
Code/Forest and Range Practices Act	1	1	0
Forest Act	7	0	7

* Note: hearings held and decisions issued in 2008 do not necessarily reflect the number of appeals filed in 2008. Of the 19 decisions issued and the five hearings completed in 2008, eight of the decisions and two of the hearings were in relation to appeals filed in 2007 or earlier.

** Note: most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

Summaries of Decisions

January 1, 2008 ~ December 31, 2008

Appeals are not heard by the entire Commission; the appeals are heard by a "panel" of the Commission. The Chair of the Commission will decide whether an appeal should be heard and decided by a panel of one, or by a panel of three members of the Commission. The size and composition of the panel generally depends upon the type(s) of expertise needed by the Commission members in order to understand the issues and adjudicate in a fair and impartial manner.

Under all of the statutes in which the Commission is empowered to hear appeals, the Commission has the power to confirm, vary or rescind the decision under appeal and to send the matter back to the original decision-maker with or without directions. In addition, under the *Private Managed Forest Land Act* the Commission may make any other order it considers appropriate. When an appellant is successful in convincing the panel that the decision under appeal was made in error, or that there is new information that will change the decision, the appeal is said to be "allowed". If the appellant succeeds in obtaining some changes to the decision, but not all that he or she has asked for, the appeal is said to be "allowed in part". When an appellant fails to establish on a balance of probabilities that the decision is incorrect on the facts or in law, and the Commission upholds the original decision, the appeal is said to be "dismissed".

The Commission also has the power to order a party or intervenor to pay the costs of another party or intervenor. An application for costs may be made at any time in the appeal process, but will not normally be decided until the hearing concludes and the final decision is rendered.

It is important to note that the Commission encourages parties to resolve the subject of the appeal either on their own or with the assistance of the Commission. For appeals under the *Forest Act*, a special procedure has been put in place in accordance with a memorandum from the Ministry of Forests and Range. Upon receipt of a Notice of Appeal under the *Forest Act*, the Commission will hold the appeal in abeyance for 30 days to allow the parties an opportunity to enter into discussions to resolve the issues under appeal.

Regardless of the statute, many appeals are resolved without the need for a hearing. Sometimes the parties will reach an agreement amongst themselves and the appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a consent order and ask the Commission to approve the order. The consent order then becomes an order of the Commission. The Commission has included a description of a consent order in the summaries.

It is also important to note that the Commission issues many decisions each year, some

that are published and others that are not. Therefore, not all of the decisions made by the Commission between January 1, 2008 and December 31, 2008 have been included in this Annual Report. Rather, we have selected a few of the Commission's decisions to be summarized in this report that reflect the variety of subjects and issues that come before the Commission in any given year. As has been noted in the Message from the Chair, the subject matter and the issues can vary significantly in both technical and legal complexity. The summaries have been organized according to the statute under which the appeal was filed.

Finally, these summaries are an interpretation of the decisions by Commission staff and may be subject to a different interpretation. For a full viewing of all published decisions issued during this report period, and summaries of those decisions, please refer to the Commission's web page.

Appeals under the *Forest and Range Practices Act*

What constitutes a "stream"

2006-FOR-015(a) B & T Forest Products Ltd. v. Government of British Columbia
Decision Date: February 19, 2008
Panel: Alan Andison

B&T Forest Products ("B&T") is the holder of a Salvage Non-Replaceable Forest Licence in the Finger Lake Watershed, south of Vanderhoof, BC. A watercourse ran through Block 1 of Cutting Permit 1 within the licence area. B&T staff determined, before harvesting began, that the watercourse was not a stream and did not, therefore, require protection under forestry legislation. After harvesting, staff from the Ministry of Forests inspected the site and found running water within Block 1. The Ministry concluded that it was a stream and that B&T had contravened subsections 11(1) and 14(1) of the *Timber Harvesting and Silviculture Practices Regulation* (the "*Regulation*") by failing to protect the stream during harvesting and road construction. A total penalty of $7,000 was imposed for the contraventions.

B&T appealed on the grounds that it did not contravene the *Regulation* because the watercourse in question was not a stream. B&T also invoked the defences of due diligence and mistake of fact, and argued that the penalty was too severe.

The first issue considered by the Commission was whether the watercourse within Block 1 was a "stream" within the meaning of the relevant legislation. To be a "stream" under the legislation in question a watercourse must have a continuous channel bed of at least 100 metres, with observable scour or alluvial deposits. The parties agreed that there was a stream above the boundary of Block 1. The Commission accepted that B&T intentionally adjusted the northern boundary of Block 1 so as to exclude that stream from the block. The parties also agreed that there was a dry channel bed with definable banks and alluvial materials 30 metres south of the northern boundary.

The dispute related to the wet area between the northern boundary and the dry channel. Because B&T's witnesses had inspected the area prior to harvesting, whereas the government's witnesses had not, the Commission gave more weight to B&T's evidence that the wet area did not exhibit the characteristics of a stream before harvesting began and was more aptly described as a non-classified drainage or seepage. Therefore, the Commission determined that Block 1 did not contain a channel bed of 100 metres in length with scour or alluvial sediment, and that B&T did not contravene sections 11(1) and 14(1) of the Regulation. As a result, the defences invoked by B&T and the appropriateness of the penalty were not addressed.

▶ The appeal was allowed.

Application for intervenor status

2008-FOR-001(a) and 2008-FOR-002(a) Canadian Forest Products Ltd. v. Government of British Columbia (Forest Practices Board, Third Party; Council of Forest Industries, Applicant)
Decision Date: May 27, 2008
Panel: Alan Andison

Canadian Forest Products Ltd. ("Canfor") appealed a determination of the District Manager, Fort St. James Forest District, that Canfor had contravened section 79(6)(a) of the *Forest Planning and Practices Regulation* (the "*Regulation*") by failing to replace a failed culvert with an appropriate permanent structure. Concurrent with that determination, the District Manager also issued a remediation order requiring Canfor to re-establish the road prism where the culvert had failed, and to install a suitable permanent structure. Canfor also appealed the remediation order.

The Council of Forest Industries ("COFI") applied to intervene in the appeals, in order to make submissions on the interpretation and application of section 79(6)(a) of the *Regulation*, and in particular, on the issue of whether an obligation to maintain a road includes an obligation to replace a failed culvert with an appropriate permanent structure. COFI is an industry organization which represents many of the forest licensees operating in the British Columbia Interior.

In deciding whether to grant the intervenor application, the Commission considered: (1) whether COFI had a valid interest in participating in the appeal; (2) whether COFI's participation would be of assistance in the proceeding; and (3) if so, the extent to which COFI should be permitted to participate.

The Commission found that COFI had a valid interest in the question of the proper interpretation on section 79(6)(a) of the *Regulation*, as it represents forest companies that could be affected by the outcome of the appeals. Further, the Commission found that COFI will provide an industry-wide perspective that is unique from the other parties' perspectives and will be of assistance to the Commission in deciding the appeal. The Commission also found that allowing COFI to participate in a limited manner would not cause unnecessary delay in the proceedings.

The Commission granted COFI's application for intervenor status on the conditions that it provides a written argument on the interpretation of section 79(6)(a) of the *Regulation*, that it limits its oral arguments to 45 minutes, and that it does not lead evidence, cross-examine on any evidence, or raise new issues.

▶ The application was granted.

Contraventions relating to marine log salvage

Since logging began on the B.C. coast, logs have escaped from booms during transit to mills or while in storage. The recovery of logs left behind in coastal waters and rivers as a result of logging operations is referred to as marine log salvage.

The Ministry of Forests and Range regulates marine log salvage activities along the coast to ensure that as many of these logs as possible are recovered and returned to the manufacturing process. However, the legislation relating to log salvage only allows a salvor to take the wood found floating in the water, or on the beach below the high water mark. Salvors are prohibited from removing timber from above the high water mark, from cutting standing timber or from manufacturing timber (this includes cutting off any root ball, branches or portion of the butt), except where they hold a permit or licence to do so.

When there is an allegation that a salvor didn't just simply "find" or recover the logs, but that the salvor actually cut the trees without authority, the evidence against the salvor is usually circumstantial – meaning that it is not direct evidence from a witness

who saw or heard something. Rather, it is a fact that can be used to infer another fact. Since salvaging often takes place in remote areas along the coast where there are no witnesses, the evidence presented in these type of appeals can involve highly sophisticated DNA matching processes used to "match" the suspect logs with stumps on the land.

In 2008, the Commission issued one decision on an appeal involving marine log salvors. It was follows.

2008-FOR-003(a) Robert Burrows v. Government of British Columbia

Decision Date: November 6, 2008

Panel: Paul Love

Robert Burrows had been a licensed marine log salvor for many years. Salvors are permitted to salvage timber which is free floating or found below the high water mark. In August 2004, forest officers with the Ministry of Forests and Range found Mr. Burrows and another man in possession of numerous logs that showed evidence of having been harvested from above the high water mark. The forest officers also found several stumps above the high water mark in an area where Mr. Burrows was operating. Several of those stumps were subsequently matched to logs in Mr. Burrows' possession. The Ministry seized the logs, which were valued at almost $13,000. The District Manager, North Island - Central Coast Forest District, determined that Mr. Burrows had contravened sections 52(1) and 52(3) of the *Forest and Range Practices Act* by cutting and removing timber from Crown land without authorization. The District Manager levied a $10,000 penalty against Mr. Burrows.

Mr. Burrows requested a review of the determination. The reviewer confirmed the determination. Mr. Burrows then appealed to the Commission, claiming that he had been hired as a boat operator for the salvage operation, and that the other man was responsible for the unauthorized harvesting.

During the appeal hearing, the parties reached a settlement. By consent of the parties, the Commission varied the determination by reducing the penalty from $10,000 to $5,000.

▶ Accordingly, the appeal was allowed, in part.

Appeals filed out of time

2008-FOR-008(a) Cindy Ling v. Government of British Columbia

Decision Date: November 13, 2008

Panel: Alan Andison

Ms. Ling has held a timber scaling licence for over 20 years, and works as an independent timber scaler. Over a period of approximately six months in 2006, check scalers from the Ministry of Forests and Range check scaled ten parcels of timber that Ms. Ling had scaled. Check scales involve remeasuring the loads of logs scaled by the original scaler and comparing scale results in terms of log volume and value. If the volume or value between the check scale and original scale varies by more than 3 percent, section 97(4) of the *Forest Act* requires that the check scale replace the original scale. Of the ten parcels that were check scaled, six of Ms. Ling's original scales were cancelled and replaced with the check scales.

In March 2007, the District Manager determined that Ms. Ling had contravened section 96(1) of the *Forest Act* by not following the scaling procedures prescribed in section 6 of the *Scaling Regulation*. The District Manager levied no penalty for the contravention.

In June 2007, Ms. Ling filed a civil action in the BC Supreme Court against the Province alleging, among other things, negligence in relation to the check scales. In March 2008, the Court dismissed Ms. Ling's civil claim on the basis that it constituted an impermissible collateral attack on the District Manager's determination.

In August 2008, Ms. Ling filed an appeal with the Commission against the District Manager's determination. The appeal was filed approximately 16 months after the expiry of the 3-week statutory limitation period for appealing the determination. Under section 131(5) of the *Forest Practices Code of British Columbia Act* (the "*Code*"), failure to deliver a notice of appeal within the 3-week period leads to the loss of the right to an appeal. However, pursuant to section 131(4) of the *Code*, the Commission may extend the time for filing an appeal. Ms. Ling requested that the Commission extend the deadline for filing her appeal.

The Commission considered the reasons for the delay in filing the appeal, the potential prejudice to Ms. Ling if the appeal was rejected, and the potential prejudice to the Government if the appeal was accepted despite the delay.

The Commission found that Ms. Ling's rights and obligations regarding filing an appeal were clearly set out in the District Manager's determination, and she had the benefit of legal advice on the matter since at least February 2007. Ms. Ling's explanation for her failure to file an appeal within the time limit was that the Ministry had failed to respond to her in a timely way and withheld relevant information from her until it was disclosed in December 2007 as part of the civil action. However, the Commission found that Ms. Ling did not file an appeal with the Commission in a timely manner once that information was disclosed, nor did she do so after her civil action was dismissed despite forceful direction from the Court that she should have pursued the matter through the appeal process.

The Commission considered the fact that not extending the time limit for filing the appeal would leave Ms. Ling with no right to an appeal. However, the Commission found that the prejudice to Ms. Ling as a result of having her appeal rejected was mitigated by the fact that the determination imposed no penalty on her. In addition, the Commission held that accepting the appeal would prejudice the Government by causing it to expend additional expense. Also, the Commission found that, if it accepted the appeal, the delay may adversely affect the Government's ability to present its case because the District Manager had retired from the Ministry. Finally, the Commission found that rejecting the appeal would have no adverse effect on the environment or forest resources.

- Accordingly, the appeal was rejected for being filed out of time.

Appeals under the *Forest Act*

All of the appeals decided under this Act in 2008 related to stumpage rates. A stumpage rate is the amount of money that a person (the licensee) must pay to the Government for harvesting Crown timber. The Ministry of Forests and Range determines the rate that a licensee must pay, and advises the licensee of the rate in a stumpage advisory notice or a stumpage adjustment notice.

Section 105 of the *Forest Act* states that these rates must be determined, redetermined or varied in accordance with the policies and procedures approved by the Minister of Forests and Range. Those policies and procedures are contained in two manuals, one for the interior forest region, and one for the coastal forest region. For the interior, stumpage rates must be calculated in accordance with the Interior Appraisal Manual ("IAM"). For the coast, stumpage rates must be calculated in accordance with the Coast Appraisal Manual ("CAM"). The content of these manuals have the force of law under section 105 of the *Forest Act* and the Commission is required to apply them by section 149(3) of the Act.

Dispute over road cost data submitted by a licensee

2005-FA-113(b); 2005-FA-128(a); 2005-FA-129(a) Weyerhaeuser Company Limited v. Government of British Columbia

Decision Date: November 28, 2008

Panel: Alan Andison

Weyerhaeuser Company Limited ("Weyerhaeuser") appealed three stumpage determinations issued by the Timber Pricing Coordinator, Southern Interior Forest Region, Ministry of Forests and Range, for three cutting permits in the Kamloops Forest District. The appeals concerned the cost allowances for various roads that Weyerhaeuser planned to build in order to harvest the cutting permit areas. Weyerhaeuser submitted data to the Ministry indicating the lengths of the new roads that Weyerhaeuser estimated needed to be built. The Timber Pricing Coordinator did not accept all of those road lengths, and substituted other lengths for the purposes of determining the stumpage rates applicable to timber harvested under the cutting permits.

On April 11, 2006, the Commission issued a preliminary decision on one of the appeals. The Commission found that the Timber Pricing Co-ordinator had the discretion to reject the road lengths submitted by Weyerhaeuser, and to substitute road lengths that were reasonable, if, based on the relevant information available to her, the length of road proposed by Weyerhaeuser was unnecessary, taking into account regulatory requirements and the least cost principle (Appeal No. 2005-FA-113(a)). However, that decision was not conclusive of the appeals, because the factual merits of the stumpage determinations had not been addressed.

Before the Commission held a hearing on the factual merits of the appeals, the parties negotiated a settlement. By consent of the parties, the Commission ordered that the stumpage determinations be varied by applying road length data that was agreed upon by the parties.

▶ Accordingly, the appeals were allowed.

Change in log grade categories leads to stumpage dispute

2007-FA-053(a) Iron Mountain Ranch Ltd v. Government of British Columbia

Decision Date: June 5, 2008

Panel: David Ormerod

Iron Mountain Ranch Ltd. (the "Appellant") appealed a stumpage determination set out in a stumpage advisory notice issued by the Appraisal Administrator, Central Cascades Forest District, Southern Interior Forest Region. The determination pertained to timber harvested under cutting permit W ("CP W") of a blanket salvage woodlot licence held by the Appellant.

In determining the stumpage rate for CP W, the Appraisal Administrator applied section 6.3.1(2)(b) of the IAM, rather than section 6.3.1(2)(a), resulting in a higher stumpage rate for CP W. In doing so, the Appraisal Administrator relied on the language in a formula in section 6.3.1(4)(a) of the IAM, which only refers to "grade 1" and "grade 2" sawlog volumes and values billed. Based on those words, the Appraisal Administrator only counted logs that had been recorded as grades 1 and 2 in the billing records for the licence during the relevant time period. She did not include logs that had been recorded as "ungraded" in the billing records for the licence during that time period. The total volume of grades 1 and 2 sawlogs that were billed to the licence during that time period was less than the 500 m^3 minimum required for section 6.3.1(2)(a) to apply in determining the stumpage rate. Therefore, the stumpage rate was determined based on data from other licences, and not the weighted average sawlog stumpage rate for this licence.

The Appellant argued that the Appraisal Administrator erred in not counting the "ungraded" logs towards the 500 m^3 minimum required for section 6.3.1(2)(a) to apply. It argued that, although those logs were not recorded as grades 1 and 2, the logs were, in fact, sawlogs that had been billed to the licence during the relevant time period, but they were called "ungraded" instead of grades 1 or 2 because those logs were scaled before the *Scaling Regulation* was amended by repealing the former grades that were designated for sawlogs (i.e., grade "blank" and grade 3), and replacing them with grades 1 and 2 for sawlogs. Essentially, the Appellant argued that a change in the grades used for scaling sawlogs should not result in sawlogs that had been graded under the former scheme from being excluded when calculating the stumpage rate for CP W.

Based on the evidence, the Commission found that the reference in the billing records to "ungraded" logs was a reference to grade "blank" sawlogs under the former provisions of the *Scaling Regulation*. The Commission further found that, if the ungraded sawlogs had been counted in the formula in section 6.3.1(4)(a), which had previously included grade blank sawlogs but was amended to include only grades 1 and 2 sawlogs, then the volume billed to the licence during the relevant time period would have exceeded the 500m3 threshold, and the stumpage rate would have been determined at the lower rate. The Commission held that, if the reference to grades 1 and 2 in section 6.3.1(4)(a) of the IAM was interpreted based on its plain and ordinary meaning, it conflicts with sections 6.3.1(2) and 6.3.1(4)(b) of the IAM, which indicate an intention to count "sawlogs". Further, the Commission found that applying the formula in section 6.3.1(4)(a) based on its plain and ordinary meaning, which is what the Appraisal Administrator did, led to an absurd result, because some sawlogs that had been billed to the licence during the relevant time period were counted (i.e., grades 1 and 2), and others were not (i.e., ungraded or grade blank). The Commission found that the principles of statutory interpretation require that words must be interpreted in their entire context, and interpretations that lead to internal conflicts and absurd results are to be avoided if possible. Accordingly, the Commission found that the intent of section 6.3.1(4)(a) of the IAM, when considered in the context of the language in other parts of section 6.3.1, was to count all sawlogs billed to the licence during the relevant time period, and therefore, the Appraisal Administrator should have counted the ungraded sawlogs in determining the stumpage rate for the licence.

The Commission referred the matter back to the Appraisal Administrator with directions to re-determine the stumpage appraisal for CP W by including the ungraded sawlog volumes that were billed to the licence during the relevant time period.

▶ Accordingly, the appeal was allowed.

Omission of bonus bid from the stumpage rate is not a calculation error

2008-FA-001(a); 2008-FA-002(a); 2008-FA-003(a); 2008-FA-004(a); 2008-FA-005(a) Pristine Log and Timber Ltd v. Government of British Columbia

Decision Date: July 14, 2008

Panel: Alan Andison

Pristine Log and Timber Ltd. (the "Appellant") appealed the total stumpage rate set out in five notices issued by the Timber Pricing Coordinator, Southern Interior Forest Region, Ministry of Forests and Range. The stumpage rate pertained to timber harvested under a non-replaceable forest licence held by the Appellant. The notices under appeal were issued after the Ministry discovered an omission in previously issued notices. The original

notices set the total stumpage rate for sawlogs harvested under the licence at $0.25 per m^3. That total stumpage rate omitted the bonus bid of $5.43 per m^3, which the Appellant had submitted in its application and tender for the licence, and which was a term of the licence agreement. In September 2007, the Timber Pricing Coordinator issued the new notices which set the total stumpage rate at $5.68 per m^3, retroactive to the periods covered by the original notices.

The Appellant argued that the revised total stumpage rate should apply as of September 1, 2007, rather than retroactively to the periods covered by the original notices. The Appellant submitted that omitting the bonus bid was "an error… in performing the calculations specified in the manual" under section 2.4(1)(c) of the IAM, and therefore, it was a correctable error. Under section 2.4(5) of the IAM, if a correctable error is made, then the effective date of the reappraisal is the first day of the month following the date on which notice of the error is received by the regional manager, which would be September 1, 2007, in this case.

The Government submitted that the omission was not "an error… in performing the calculations specified in the manual" under section 2.4(1)(c) of the IAM. The Government argued that section 5.6.6 of the IAM sets out, as a matter of law, the "total stumpage rate" under the IAM. Section 5.6.6 states that "The total stumpage rate is the upset stumpage rate plus any bonus bid." The Government submitted that the Appellant had harvested and scaled all of the timber under the licence before September 1, 2007, and therefore, applying section 2.4 of the IAM would result in the Appellant paying no bonus bid at all. The Government argued that failing to pay the bonus bid would conflict with the Appellant's legal obligation under the licence agreement and section 103(1) of the *Forest Act* to pay the bonus bid. The Government submitted that interpretations of the IAM that do not conflict with the *Forest Act* are preferred under the rules of statutory interpretation.

The Commission considered the meaning of sections 2.4 and 5.6.6 of the IAM, as well as the language in sections 103(1) and 105(1) of the *Forest Act*. The Commission found that, although section 103(1) uses the word "stumpage" broadly, subsections (c) and (d) distinguish between the bonus bid and "the rate of stumpage applicable to the timber under section 105" as separate components of the amount payable under section 103. This provides that the bonus bid is distinct from "the rate of stumpage applicable to the timber under section 105." The Commission held that this indicates that the addition of the bonus bid to the upset stumpage rate under section 5.6.6 of the IAM is not a calculation that is "specified in the manual." The Commission also found that section 5.6.6 reflects the provisions in section 103(1) of the *Forest Act*; namely, that the total amount payable to the government on a per cubic metre basis, otherwise known as the total stumpage rate, is the sum of the bonus bid and the rate of stumpage applicable to the timber under section 105, otherwise known as the upset stumpage rate. Also, section 105(1)(c) of the *Forest Act* directs that the policies and procedures in the IAM are to be used for the determination of stumpage **rates**. The Commission found that the bonus bid is not a stumpage rate; rather, it is a distinct financial obligation under the *Forest Act* that is added to the stumpage rate to create the "total stumpage rate." Therefore, the addition of the bonus bid to the previously calculated stumpage rate is not a calculation specified in the manual, and consequently, it is not a correctable error under section 2.4(1)(c) of the IAM.

Additionally, the Commission held that section 2.4 of the IAM does not contemplate correcting the omission that occurred in this case. Here, the Timber Pricing Coordinator completely

omitted the bonus bid from the total stumpage rate. If section 2.4 applied, the Appellant would pay no bonus bid on any of the timber harvested. This omission, and the result that would occur if section 2.4 applied, is contrary to the Appellant's mandatory legal obligation to pay the bonus bid, as set out in section 103(1) of the *Forest Act* as well as the licence agreement. Applying a procedure in the IAM, a form of legislation subordinate to the *Forest Act* that produces a result which goes against the clear and express language of the *Forest Act* cannot be what the Minister intended. The rules of statutory interpretation require that, if there is a plausible interpretation of section 2.4 that avoids conflict with the *Forest Act*, that interpretation is to be preferred. Consequently, the Commission found that the types of "errors" contemplated in section 2.4(1) of the IAM do not include a complete failure to include the bonus bid in the total stumpage rate such that the licensee avoids paying any bonus bid whatsoever.

The Commission concluded that the total stumpage rate set out in the original notices was void and the total stumpage rate had to be calculated anew, which is what the Timber Pricing Coordinator did. The Timber Pricing Coordinator properly included the bonus bid in the new total stumpage rate, and properly set the effective dates of the new notices to be the same as the original notices.

Accordingly, the Commission confirmed the stumpage determinations under appeal.

▶ The appeals were dismissed.

Road development costs apportioned based on Appraisal Manual and agreement between Ministry and licensee

2008-FA-007(a) and 2008-FA-010(a) Tahtsa Timber Ltd v. Government of British Columbia
Decision Date: August 14, 2008
Panel: David Ormerod

Tahtsa Timber Ltd. (the "Appellant") appealed two stumpage determinations issued by the Timber Pricing Officer, Northern Interior Forest Region, Ministry of Forests and Range. The determinations applied to timber harvested under cutting permits 104 and 108 issued under a non-replaceable forest licence ("NRFL") held by the Appellant. The Appellant asked the Commission to direct the Timber Pricing Officer to include an additional $126,000 in estimated road development costs in determining the stumpage rates for cutting permits 104 and 108.

In 2003, the Ministry had asked the Appellant to construct a forest service road. In exchange, the Ministry offered to allow the Appellant to allocate the total estimated development cost of the road among several of the Appellant's cutting permits under the NRFL that were, or would in the future be, tributary to the road. The parties signed an apportionment agreement which identified the estimated total cost of the road and outlined how those estimated costs would be apportioned to existing and future cutting permits. Six of those cutting permits were never harvested and no stumpage was billed to them. Under the apportionment agreement, $126,000 in estimated development costs had been attributed to them.

The Appellant submitted that the cutting permits which were not harvested were "surrendered" to the Crown with no outstanding "take or pay" obligations, and therefore, those cutting permits effectively did not exist. The Appellant argued that

the $126,000 in estimated development costs that could have been applied to the stumpage appraisals for those cutting permits should be applied to cutting permits 104 and 108.

The Government submitted that the total estimated road development costs covered by the apportionment agreement had already been amortized against cutting permits that were issued under the Appellant's NRFL.

The Commission reviewed the language in section 4.3.1.14 of the IAM and the apportionment agreement. Based on the language in the IAM and the agreement, the Commission found that the estimated development costs could not be reallocated from the unharvested cutting permits that had been surrendered to other cutting permits. The Commission also found that the agreement apportioned the estimated development costs for stumpage appraisal purposes only. The agreement expressly stated that it did not constitute an obligation to ensure that estimated costs would equal actual construction costs or that estimated costs would be "written off" in stumpage appraisals.

Accordingly, the Commission confirmed the stumpage determinations under appeal.

- The appeals were dismissed.

Appeals under the *Private Managed Forest Land Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Private Managed Forest Land Act*.

Appeals under the *Range Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Range Act*.

Appeals under the *Wildfire Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Wildfire Act*.

Appeals of Commission Decisions to the Courts

January 1, 2008 ~ December 31, 2008

British Columbia Supreme Court

During the report period, there were no judgments released by the Court on appeals of Commission decisions.

British Columbia Court of Appeal

During the report period, there were no judgments released by the Court on appeals of Commission decisions.

Supreme Court of Canada

There are no appeals of Commission decisions before the Supreme Court of Canada.

APPENDIX I

Legislation and Regulations

Reproduced below are the sections of the *Forest Practices Code of British Columbia Act* and the *Administrative Review and Appeal Procedure Regulation* which establish the Commission and set out the general powers and procedures that apply to most appeals.

Also included are the appeal provisions contained in each of the five statutes which provide for an appeal to the Commission from certain decisions of government officials: the *Forest and Range Practices Act*, the *Forest Act*, the *Range Act*, and the *Wildfire Act*. Also included is the *Private Managed Forest Land Act* and the *Private Managed Forest Land Regulation*, which establish the particular powers and procedures of the Commission in relation to appeals under that enactment.

The legislation contained in this report is the legislation in effect at the end of the reporting period (December 31, 2008). Please note that legislation can change at any time. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Administrative Review and Appeals

Part 6 of the *Forest and Range Practice Act* applies

130.1 Part 6 of the *Forest and Range Practices Act* applies to this Act and the regulations under this Act, unless the context indicates otherwise.

Appeal

131 (1) To initiate an appeal under section 82 or 83 of the *Forest and Range Practices Act*, the person referred to in section 82(1) of that Act, or the board under section 83(1) of that Act, no later than 3 weeks after the latest to occur of

(a) the original decision,

(b) any correction under section 79 of that Act, and

(c) any review under section 80 or 81 of that Act,

must deliver to the commission

(d) a notice of appeal,

(e) a copy of the original decision, and

(f) a copy of any decision respecting a correction or review.

(2) [Repealed 2003-55-94.]

(3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and

(a) to the board, if the notice was delivered

(i) by the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask question and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Repealed

131.1 [Repealed 2003-55-95]

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Repealed

138 [Repealed 2003-55-95.]

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Forest Appeals Commission continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act*, the *Private Managed Forest Land Act* and the *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of the following members appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(3) The *Administrative Tribunals Appointment and Administration Act* applies to the commission.

(4) to (6) [Repealed 2003-47-32.]

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Commission staff

196 (1) Employees necessary to carry out the powers and duties of the commission may be appointed under the *Public Service Act*.

(2) In accordance with the regulations, the commission may engage or retain specialists or consultants that the commission considers necessary to carry out the powers and duties of the office and may determine their remuneration.

(3) The *Public Service Act* does not apply to the retention, engagement or remuneration of specialists or consultants retained under subsection (2).

No oral hearing as of right

196.1 A person is not entitled to an oral hearing before the commission.

Delegation of powers

196.2 (1) The chair may in writing delegate to a person or class of persons any of the commission's powers or duties under this Act, except the power

(a) of delegation under this section, or

(b) to make a report under this Act.

(2) A delegation under this section is revocable and does not prevent the commission exercising a delegated power.

(3) A delegation may be made subject to terms the chair considers appropriate.

(4) If the chair makes a delegation and then ceases to hold office, the delegation continues in effect as long as the delegate continues in office or until revoked by a succeeding chair.

(5) A person purporting to exercise a power of the commission by virtue of a delegation under this section must, when requested to do so, produce evidence of his or her authority to exercise the power.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act are functioning and identify problems that may have arisen under their provisions, and

(ii) the minister responsible for the administration of the *Ministry of Forests and Range Act* with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the minister responsible for the administration of the *Ministry of Forests and Range Act* concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

Forest and Range Practices Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 ~ Correction, Reviews and Appeals

Determinations stayed until proceedings concluded

78 (1) A determination that may be reviewed under section 80 or appealed under section 82 is stayed until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

(2) Despite subsection (1), the minister may order that a determination, other than a determination to levy an administrative penalty under section 71 or 74(3)(d) is not stayed or is stayed subject to conditions, on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made under prescribed sections or for prescribed purposes.

Correction of a determination

79 (1) Within 15 days after a determination is made under section 16, 26(2), 27(2), 32(2), 37, 51(7), 54(2), 57(4), 66, 71, 74 or 77 of this Act, the person who made the determination may

(a) correct a typographical, an arithmetical or another similar error in the determination, and

(b) [Repealed 2003-55-37.]

(c) correct an obvious error or omission in the determination.

(2) The correction does not take effect until the date on which the person who is the subject of the determination is notified of it under subsection (4).

(3) The discretion conferred under subsection (1)

(a) is to be exercised in the same manner as the determination affected by it, and

(b) is exercisable with or without a hearing and

(i) on the initiative of the person who made the determination, or

(ii) at the request of the person who is the subject of the determination.

(4) The person who corrected a determination under this section must notify the person who is the subject of the determination.

Review of a determination

80 (1) Subject to subsection (2), at the request of a person who is the subject of a determination under section 16, 20(3), 26(2), 27(2), 32(2), 37, 38(5), 39, 51(7), 54(2), 57(4), 66, 71, 74, 77, 77.1, 97(3), 107, 108, 112(1)(a) or 155(2) of this Act, the person who made the determination, or another person employed in the ministry and designated in writing by the minister must review the determination, but only if satisfied that there is evidence that was not available at the time of the original determination.

(2) On a review required under subsection (1) the person conducting the review may consider only

(a) evidence that was not available at the time of the original determination, and

(b) the record pertaining to the original determination.

(3) To obtain a review of a determination under subsection (1) the person must request the review not later than 3 weeks after the date the notice of determination was given to the person.

(4) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(5) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Board may require review of a determination

81 (1) If the board first receives the consent of the person who is the subject of a determination under section 16, 37, 71 or 74 of this Act, the board may require a review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of a determination under subsection (1), the board must require the review not later than 3 weeks after the date the notice of determination was given to the person.

(3) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Appeal to the commission by a person who is the subject of a determination

82 (1) The person who is the subject of a determination referred to in section 80, other than a determination made under section 77.1, may appeal to the commission either of the following, but not both:

(a) the determination;

(b) a decision made after completion of a review of the determination.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

83 (1) The board may appeal to the commission either of the following, but not both:

(a) a determination referred to in section 81;

(b) a decision made after completion of a review of the determination.

(2) The board may apply to the commission for an order under section 84(2) if

(a) the minister authorized under section 71 or 74 of this Act to make a determination has not done so, and

(b) a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under subsection (1) or an application under subsection (2).

Powers of the commission

84 (1) On an appeal

(a) by a person under section 82(1), or

(b) by the board under section 83(1),

the commission may

(c) consider the findings of the person who made the determination or decision, and

(d) either

(i) confirm, vary or rescind the determination or decision, or

(ii) with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

(2) On an application under section 83 by the board the commission may order the official or minister referred to in section 83(2) to make a determination as authorized under the applicable provision that is referred to in section 83(2)(a).

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After filing in the court registry, an order under subsection (3) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision that was the subject of a review required under Division 1 of this Part.

(2) An appeal may be made to the Forest Appeals Commission from

(a) a determination, order or decision of the chief forester, under section 60.6, 68, 70(2), 77(1)(b) or 112(1),

(b) a determination of an employee of the ministry under section 105(1), and

(c) an order of the minister under section 75.95(2).

(3) No appeal may be made under subsection (1) unless the determination, order or decision has first been reviewed under Division 1 of this Part.

(4) If a determination, order or decision referred to in subsection (1) is varied by the person conducting the review, the appeal to the commission is from the determination, order or decision as varied under section 145.

(5) If this Act gives a right of appeal, this Division applies to the appeal.

(6) For the purpose of subsection (2), a redetermination or variation of stumpage rates under section 105(1) is considered to be a determination.

Notice of appeal

147 (1) If a determination, order or decision referred to in section 146(1) or (2) is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after that date the determination, order or decision is served on the person under the provisions referred to in section 146(2), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to

review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of

a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 6 of the *Forest and Range Practices Act* applies

167.3 (1) Divisions 1 to 4 of Part 6 of the *Forest and Range Practices Act* apply to this Act and the regulations under this Act, unless the context indicates otherwise.

(2) Without limiting subsection (1), sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

Range Act

Part 3

COMPLIANCE AND ENFORCEMENT

Division 3 – Reviews and Appeals

Reviews

69 (1) Subject to subsection (2), at the request of a person who is the subject of, or whose licence or permit is affected by,

(a) an order of a forest officer under section 60(1),

(b) an order of a district manager under section 36(1) or (2), 49(1), 50(1), 55, 60(1), 62(1)(b) or 63(1),

(c) a decision of the district manager referred to in section 25(5) or 50(4), or

(d) amendments under section 47 or 48,

the person who made the order or decision or who prepared the amendments, or another person employed in the ministry and designated in writing by the minister,

must review the order, decision or amendments, but only if satisfied that there is evidence that was not available at the time of the original order, decision or amendments.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, decision or amendments, and

(b) the record pertaining to the original order, decision or amendments

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of, or whose licence or permit is affected by, the order, decision or amendments must request the review not later than 21 days after the date the notice of the order, decision or amendments was delivered to the person.

(4) The minister may extend the time limit in subsection (3) before or after its expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to

(a) make an order referred to in subsection (1)(a) or (b),

(b) make a decision referred to in subsection (1)(c), or

(c) prepare amendments referred to in subsection (1)(d)

that the person who made the original order or decision or prepared the original amendments had at the time of the original order, decision or amendments.

(6) After the preparation of amendments under subsection (5)(c) to a licence or permit, and on delivery of the particulars of the amendments to the holder of the licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments.

Appeals to the commission

70 (1) The person who is the subject of, or whose licence or permit is affected by,

(a) an order,

(b) a decision, or

(c) amendments

referred to in section 69(1) may appeal to the commission either of the following, but not both:

(d) the order, decision or amendments;

(e) a decision made after completion of a review of the order, decision or amendments.

(2) An applicant referred to in section 15(2) may appeal to the commission an order of the minister made under that provision.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of the commission

71 (1) On an appeal under section 70, the commission may

(a) consider the findings of the person who made the order or decision or who prepared the amendments, and

(b) either

(i) confirm, vary or rescind the order, decision or amendments, or

(ii) with or without directions, refer the matter back to that person for reconsideration.

(2) If an appeal referred to in subsection (1) results in amendments to a licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments as soon as the particulars of the amendments have been delivered to

the holder of the licence or permit.

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After a certified copy of an order under subsection (3) is filed with the Supreme Court, the order has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Review or appeal not a stay

72 Unless the minister orders otherwise, a review or an appeal under this Act does not operate as a stay or suspend the operation of the order, decision or amendments being reviewed or appealed.

Wildfire Act

Part 3

ADMINISTRATIVE REMEDIES AND COST RECOVERY

Division 3 ~ Corrections, Reviews and Appeals

Order stayed until proceedings concluded

36 (1) An order that may be reviewed under section 37 or appealed under section 39 is stayed until the person who is the subject of the order has no further right to have the order reviewed or appealed.

(2) Despite subsection (1), the minister may order that an order, other than an order levying an administrative penalty under section 27 or 28(3)(d) is not stayed on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), an order is not stayed if the order is made under section 34.

Review of an order

37 (1) Subject to subsection (2), at the request of a person who is the subject of an order under section 7(3), 17(4), 25, 26, 27, 28(1) or (3)(d) or 34, the person who made the order, or another person employed in the ministry and designated in writing by the minister, must review the order, but only if satisfied that there is evidence that was not available at the time of the original order.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, and

(b) the record pertaining to the original order

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of the order must request the review not later than 3 weeks after the date the notice of order was given to the person.

(4) The minister may extend the time limit in subsection (3) section [sic] before or after the time limit's expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to make a decision that the original decision maker had at the time of the original order.

Board may require review of an order

38 (1) If the board first receives the consent of the person who is the subject of an order referred to in section 37(1), the board may require a review of the order by the person who made the order, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of an order under subsection (1), the board must require the review not later than 3 weeks after the date the notice of the order was given to the person who is the subject of the order.

(3) The minister may extend the time limit for requiring a review under this section before or after the time limit's expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the order under review.

Appeal to the commission from an order

39 (1) The person who is the subject of an order referred to in section 37(1) may appeal to the commission from either of the following, but not both:

(a) the order;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

40 (1) The board may appeal to the commission from either of the following, but not both:

(a) an order referred to in section 37;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of commission

41 (1) On an appeal under section 39 by a person or under section 40 by the board, the commission may

(a) consider the findings of the decision maker who made the order, and

(b) either

(i) confirm, vary or rescind the order, or

(ii) with or without directions, refer the matter back to the decision maker who made the order, for reconsideration.

(2) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(3) After the period to request an appeal to the Supreme Court under the *Forest Practices Code of British Columbia Act* has passed, the minister may file a certified copy of the decision of the commission with the Supreme Court.

(4) A certified copy of a decision filed under subsection (3) has the same force and effect as an order of the court for the recovery of a debt in the amount stated in the decision, against the person named in the decision, and all proceedings may be taken as if the decision were an order of the court.

This Regulation applies to appeals under the *Code, Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*.

Administrative Review and Appeal Procedure Regulation (B.C. Reg. 12/04)

Part 1

DEFINITIONS

1 In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of that Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 70(1) of that Act,

(c) for a *Forest and Range Practices Act* appeal, the person that initiates an appeal under section 82(1) of that Act, and includes the board if the board initiates an appeal under section 83(1) of the Act, or

(d) for a *Wildfire Act* appeal, the person that initiates an appeal under section 39(1) of that Act, and includes the board if the board initiates an appeal under section 40(1) of that Act;

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Exemption from time specified to appeal a determination

16 (1) In respect of an appeal under section 83 of the *Forest and Range Practices Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 79 of the *Forest and Range Practices Act*, and

(f) any review under section 80 or 81 of the *Forest and Range Practices Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(2) In respect of an appeal under section 40 of the *Wildfire Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 35 of the *Wildfire Act*, and

(f) any review under section 37 or 38 of the *Wildfire Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(3) In respect of an appeal under section 70(1) of the *Range Act*, section 82 (1) of the *Forest and Range Practices Act* or section 39(1) of the *Wildfire Act*, a person whose request for a review is denied by the reviewer for the

reason described in subsection (4) is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision, or

(e) any correction under the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*

if the appellant delivers to the commission the documents described in paragraphs (a) to (c) within 21 days after the appellant is given notice by the reviewer that the appellant's request for the review is denied for the reason described in subsection (4).

(4) The reason referred to in subsection (3) is that the reviewer is not satisfied as to the existence of evidence not available at the time of the original determination, order, decision or amendment.

[am. B.C. Reg. 83/2006, s. 9.]

Prescribed period for board to apply for order

17 The prescribed period for the purpose of section 83(2)(b) of the *Forest and Range Practices Act* is 6 months.

Notice of appeal

18 The notice of appeal referred to in section 147(1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

[am. B.C. Reg. 83/2006, s. 10.]

Deficient notice of appeal

19 (1) If a notice of appeal does not comply with section 18, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the submission to the commission of further material remedying the deficiencies.

[am. B.C. Reg. 83/2006, s. 11.]

Notification of parties following receipt of notice of appeal

20 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act*, serve a copy of the notice of appeal on the deputy minister of the minister responsible for the *Forest Act*,

(a.1) in the case of an appeal under the *Range Act*, give a copy of the notice of

appeal to the minister,

(b) in the case of an appeal under the *Forest and Range Practices Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the determination, or

(B) the person who is the subject of the determination, if the notice was delivered by the board, and

(c) in the case of an appeal under the *Wildfire Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the order, or

(B) the person who is the subject of the order, if the notice was delivered by the board.

[am. B.C. Reg. 83/2006, s. 12.]

Procedure following receipt of notice of appeal

21 Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) set the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act*.

[en. B.C. Reg. 83/2006, s. 13.]

Panel chair determined

22 For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

23 (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

24 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice

specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice

(a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to participate.

Transcripts

25 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the *Forest Act*

26 The prescribed period for the purposes of section 149.1(3) of the Forest Act is 42 days after conclusion of the hearing.

Part 4

ANNUAL REPORT OF FOREST APPEALS COMMISSION

Content

27 (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

(b) the number of appeals completed under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197(1)(b) of the *Forest Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.

[am. B.C. Reg. 83/2006, s. 14.]

Private Managed Forest Land Act

Part 4

COMPLIANCE AND ENFORCEMENT

Division 2 – Administrative Remedies

Appeal to commission

33 (1) A person who is the subject of an order, a decision or a determination of the council under section 26(1), 27(1) and (2), 30, 31(1) or 32 may appeal the order, decision or determination to the commission in accordance with the regulations.

(2) An order, a decision or a determination that may be appealed under this section, other than a stop work order, is stayed until the person who is the subject of the order, decision or determination has no further right to have the order, decision or determination appealed.

(3) The commission must conduct an appeal in accordance with this section and the regulations.

(4) The appellant and the council are parties to the appeal and may be represented by counsel.

(5) At any stage of an appeal, the commission or a member of it may direct that a person who may be directly affected by the appeal be added as a party to the appeal.

(6) The commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor in the manner and to the extent permitted or ordered by the commission.

(7) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(8) If the appellant does not deliver a written submission ordered under subsection (7) within the time specified in the order or the regulations, the commission may dismiss the appeal.

(9) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party or any intervenor and an opportunity to rebut the written submissions.

(10) The commission or a member of it may make an interim order in an appeal.

(11) Hearings of the commission are open to the public.

(12) The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

(13) The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in the person's custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(14) The commission may retain, call and hear an expert witness.

(15) An appeal under this section to the commission is a new hearing and at the conclusion of the hearing, the commission may

(a) by order, confirm, vary or rescind the order, decision or determination,

(b) refer the matter back to the council or authorized person for reconsideration with or without directions,

(c) order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal, or

(d) make any other order the commission considers appropriate.

(16) An order under subsection (15) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

Appeal to court

34 (1) A party to the appeal before the commission may appeal, within 3 weeks of being given

the decision of the commission in writing and by application to the Supreme Court, the decision of the commission on a question of law or jurisdiction.

(2) After an application is brought to the Supreme Court, a judge may order, on terms he or she considers appropriate, that all or part of the decision of the commission be stayed.

(3) An appeal from a decision of the Supreme Court lies with the Court of Appeal with leave of a justice of the Court of Appeal.

Private Managed Forest Land Regulation (B.C. Reg. 371/04)

Notice of appeal

9 (1) A person who, under section 33(1) of the Act, may appeal an order, decision or determination to the commission must submit a notice of appeal to the commission that is signed by, or on behalf of, the appellant and contains all of the following:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for service of the appellant;

(c) the grounds for appeal;

(d) the relief requested.

(2) The appellant must deliver the notice of appeal to the commission not later than 3 weeks after the later of the date of

(a) the decision of the council under section 32(2) of the Act, and

(b) the order, decision or determination referred to in section 33(1) of the Act.

(3) Before or after the time limit in subsection (2) expires, the commission may extend it.

(4) A person who does not deliver a notice of appeal within the time specified loses the right to an appeal.

Deficient notice of appeal

10 (1) If a notice of appeal does not comply with section 9 the commission may deliver a written notice of deficiencies to the appellant, inviting the appellant, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the commission delivers a notice under subsection (1), the appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

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